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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 JOHN COTTAM,

4 Plaintiff,

New York, N.Y.

5 v.

16 Civ. 4584(LGS)

6 GLOBAL EMERGING CAPITAL GROUP,  
7 LLC., et al.,

8 Defendants.

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9 November 15, 2018

10 11:38 a.m.

11 Before:

12 HON. LORNA G. SCHOFIELD,

13 District Judge

14 APPEARANCES

15 GOTTLIEB & JANEY LLP  
Attorneys for Plaintiff

16 BY: DERRELLE MARCEL JANEY  
- and -

17 GAZES LLC  
18 BY: DAVID MICHAEL DINOSO

19 CATAFAGO FINI LLP  
Attorneys for Defendants 6D Global Technologies,  
6D Acquisitions, Inc., Fantasia, and Tejune Kang  
20 BY: TOM M. FINI

21 DANIEL LARSON (via speakerphone)  
22 Third-Party Defendant

23 FIRESTONE LAW PLLC  
Attorneys for Third-Party Defendants Global Investment  
Alliance, Inc. and Early Bird Tech Limited  
24 BY: MICHAEL JOSEPH FIRESTONE

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1 THE CLERK: We are here in the matter of 16 Civil  
2 4584. Counsel, please state your name for the record.

3 MR. JANEY: For the plaintiff, Dr. John Cottam,  
4 Gottlieb & Janey, by Derrelle Janey, J-a-n-e-y.

5 Good afternoon, your Honor.

6 And I'm joined at counsel's table by my colleague,  
7 David Dinoso.

8 THE COURT: OK. Good morning.

9 MR. DINOSO: Good morning, your Honor.

10 MR. FINI: Good morning, your Honor. My name is Tom  
11 Fini, from Catafago Fini LLP.

12 THE COURT: Good morning.

13 MR. FINI: We represent defendants 6D Global  
14 Technologies, 6D Acquisitions, Fantasia, and Kang.

15 Just so your Honor understands the third-party  
16 situation, the main action is the plaintiff versus the  
17 defendants. The defendants -- the main defendants, as one form  
18 of defense, is asking in the alternative for reformation -- has  
19 a sort of a reformation claim in. Southern District authority  
20 requires that if that is the case, then you should add the  
21 other parties to the contract. So almost all of the parties  
22 who have appeared as third parties are basically saying that if  
23 there is a remedy for the plaintiff, they would have the same  
24 remedy but they are not as active. That's why Mr. Larson is  
25 called in but some of the others have made an appearance, but

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1 they are really preserving their rights but they are not  
2 actively driving the litigation.

3 THE COURT: OK. Just so I'm clear, then, the three  
4 third-party defendants who have appeared *pro se*, Mr. Hurst,  
5 Mr. Klein and Mr. Larson, with Mr. Larson being on the phone,  
6 are basically in the same category as parties to the contract  
7 as the other third-party defendants who have not appeared; is  
8 that right?

9 MR. FINI: Yes. And they are similarly situated to  
10 the plaintiff, and so we presume that they will -- we will  
11 certainly invite them to depositions, but we presume they will  
12 be basically just --

13 THE COURT: I understand.

14 MR. FINI: Yes.

15 THE COURT: OK. That is helpful. Thank you.

16 And, Mr. Firestone, who are your clients?

17 MR. FIRESTONE: Certainly, your Honor. Good morning.  
18 Michael Firestone, of Firestone Law PLLC. My clients are  
19 third-party defendants and counter claimants, Early Bird Tech  
20 Limited and Global Investment Alliance, among the other  
21 investors who were brought in by defendants because of the  
22 reformation claim.

23 THE COURT: Ah, OK. So you stand in the same position  
24 as these individuals, only your clients are entities?

25 MR. FIRESTONE: Correct.

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1 THE COURT: OK. That is helpful. Thank you.

2 MR. FIRESTONE: Thank you, your Honor.

3 THE COURT: You may be seated.

4 So, as you know, I have this case on reassignment from  
5 Judge Sullivan and he had decided some motions. I know you had  
6 settlement discussions before Judge Netburn. I understand  
7 discovery is stayed.

8 How far have you gotten in discovery?

9 MR. JANEY: If I may, your Honor? Derrelle Janey for  
10 Dr. Cottam.

11 One -- well, let me answer your direct question first.  
12 There has been substantial progress on discovery from the  
13 plaintiff's perspective. And if I may elaborate, your Honor?  
14 The discovery that Judge Sullivan ordered at I believe it is  
15 ECF number 96 is limited discovery -- not my words, Judge  
16 Sullivan's words, and it is in the context of the order. The  
17 discovery is limited certainly with respect to depositions per  
18 the order. The defendant is only permitted to three  
19 depositions, one -- two with respect to expert discovery, as  
20 the order indicates.

21 The scope of expert discovery is quite limited. I  
22 don't want to get ahead of where your Honor would like to go,  
23 but one of the points that we've elaborated in item number 12  
24 relates to our disagreement with counsel for the 16 defendants  
25 as to one of the expert reports. We raise it in the context of

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1 the case management plan only because it's our position that an  
2 anticipated motion that we would bring in regards to one of the  
3 expert reports relates to the Rule 26 issues at least insofar  
4 as the orderly progress of the case management plan.

5 So to state it in a different way, your Honor, it is  
6 our view that per Judge Sullivan's order there should only be  
7 one expert report that's at issue, not two, and I'm happy to  
8 elaborate on the basis of what -- we've certainly read your  
9 Honor's rules. We understand that a premotion letter would be  
10 required. Part of the reason why we're raising it here in the  
11 case management plan, among the reasons that I have also just  
12 described, is our reading of Federal Rule of Evidence 103  
13 suggests that to the extent that we have an objection with  
14 respect to an expert report, that we are encouraged to bring  
15 that objection at the earliest possible time. We've alerted,  
16 by way of letter dated July 2018 to counsel, that we've had  
17 that objection --

18 THE COURT: And the objection is a Daubert type  
19 objection or it's relevance --

20 MR. JANEY: It is two bases, your Honor. One, Judge  
21 Sullivan's order at ECF 96 specifically limited the scope of  
22 expert discovery in an important respect. One, Judge Sullivan  
23 indicated that no expert discovery or expert report should go  
24 to the issue of customs and practices in the securities  
25 industry. The relevant expert report --

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1 THE COURT: Why did he do that?

2 MR. JANEY: Well, one, he believed, and I concur,  
3 there was some motion practice by way of letter motion on this  
4 issue as to the scope of discovery. But by way of background,  
5 Mr. Fini, with whom we've shared a very nice, collaborative  
6 relationship, even though we disagree on the nature of the case  
7 at issue, is that here, when Mr. Fini became interposed in  
8 representing the 60 defendants -- he's second counsel to the 60  
9 defendants -- he raised a defense of mutual and/or unilateral  
10 mistake.

11 THE COURT: I'm just going to stop you here. This is  
12 too much information for me to try to do anything with it  
13 without having something in writing from both of you.

14 MR. JANEY: Sure.

15 THE COURT: Particularly since there are people who  
16 are waiting still for other conferences.

17 MR. JANEY: Understood, your Honor.

18 THE COURT: So, my apologies for interrupting you, but  
19 what I really would like to do is set a schedule.

20 MR. JANEY: Sure.

21 THE COURT: And to the extent there is an issue about  
22 the scope of expert discovery, which won't happen at least for  
23 a little while, you can tee it up by giving me your respective  
24 letters on that issue and we can set dates to do that. I can  
25 try and rule on the letters or get you on the phone for a phone

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1 conference if that's a better way to handle it. All right?

2 MR. JANEY: We appreciate that, your Honor. We  
3 anticipate submitting our letter by Monday.

4 THE COURT: All right. Then I would like a responsive  
5 letter by a week from Monday -- no, let's not do that. Let's  
6 say by Thursday of the following week, given the holiday.

7 MR. FINI: Your Honor, if I may?

8 THE COURT: Yes.

9 MR. FINI: Respectfully, we have two experts. The one  
10 expert is going to be speaking as to the two reverse stock  
11 splits and the other is a damages expert.

12 THE COURT: Neither one is custom and practice?

13 MR. FINI: No.

14 And to the extent there is custom and practice in  
15 there and to the extent we will argue that the law of the case  
16 shouldn't apply from Judge Sullivan, that wouldn't have  
17 anything to do with the taking of the depositions. Mr. Janey  
18 should take the expert's deposition and waive the Daubert  
19 motions until the appropriate time.

20 THE COURT: OK. So let's just deal with that in  
21 letters.

22 MR. JANEY: Yes.

23 THE COURT: And I will try and rule on it on the  
24 letters, but I will have a phone conference if I can't.

25 In the meantime, I'm going to accept the dates that

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1 you've proposed. So that is February 15th for the close of  
2 fact discovery.

3 MR. JANEY: Yes, your Honor.

4 THE COURT: Expert discovery by March 8th. I would  
5 like a status letter let's say by January 11th. And my  
6 individual rules say what goes in the status letter, but that  
7 is just to assure me that things are proceeding. Don't wait  
8 for the status letter if there is some issue that needs to be  
9 resolved.

10 I'd like a subsequent letter after the close of  
11 discovery on March 22nd concerning the parties' thoughts on  
12 settlement. I know you have had extensive discussions already.  
13 And we'll have a conference March 28th at 10:30, which will  
14 serve as a pre-motion conference. If there are any dispositive  
15 motions, you need to give me a letter at least two weeks before  
16 then. If I don't get a letter, I cancel the conference and  
17 I'll schedule a trial.

18 So one of the things that I wondered, however, is that  
19 I have the impression from Judge Netburn -- and I don't know  
20 anything about the details of your discussions, but all I know  
21 is that there is an insurance policy at issue and that the  
22 insurance policy is being depleted, and several months of  
23 discovery I presume will continue to eat into that insurance  
24 policy. And I'm just wondering, since that seems to be a  
25 finite amount, what the endgame is here.



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MR. JANEY: Your Honor --

THE COURT: Yes. Let me hear from the defendants first.

MR. FINI: I truly believe -- and I don't know if you would want to go off the record, but Mr. Janey is --

THE COURT: We can go off the record. I think that might be appropriate.

MR. FINI: Yes.

THE COURT: Off the record.

(Discussion off the record)

THE COURT: So I will enter an order reflecting the schedule that you have proposed. And just so you know, I hold parties to discovery schedules. I don't give discovery extensions lightly and usually only in extraordinary circumstances. So don't assume that if you all agree, that I will also agree that a discovery extension is called for. OK?

Thank you. We are adjourned.

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1 MR. JANEY: Thank you, your Honor.

2 MR. FINI: Thank you, your Honor.

3 MR. DINOSO: Thank you, your Honor.

4 MR. LARSON: Thank you, your Honor, for allowing me to  
5 attend by phone.

6 THE COURT: No problem. I am happy to now and in the  
7 future.

8 MR. LARSON: Thank you. Have a great day.

9 THE COURT: You, too.

10 (Adjourned)

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